IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7277 of 1997
With
CIVIL APPLICATION NO. 14814 OF 1999

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

KANBHAI GRAM PANCHAYAT

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 7277 of 1997

MR JB PARDIWALA for Petitioner No. 1
MR SN SHELAT, ADVOCATE GENERAL with
MS SONAL VYAS, AGP for Respondent No. 1
RULE SERVED BY DS for Respondent No. 1
MR DC DAVE for Respondent No. 2-4
MR JV JAPEE for Respondent No. 5-6

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 09/10/2002

ORAL JUDGEMENT

#. At the relevant time, the petitioner was the Sarpanch of Kanbhai Gram Panchayat. By filing this petition, the petitioner has challenged the notification issued by the State Government dated 3.9.1997 at Annexure-A, by which Kanbhai village was bifurcated into two villages, i.e. Kanbhai village and Satadia Falia village. The said notification provides that, after consulting the concerned Gram Panchayat, Taluka Panchayat and the District Panchayat, the Government is pleased to bifurcate the aforesaid existing village, i.e. Kanbhai. The said bifurcation is opposed on behalf of Kanbhai Gram Panchayat by passing a resolution on the ground that, looking to the population of the village, it is not necessary to bifurcate the area and that, even though, the elected body is in charge of the affairs of Kanbhai Gram Panchayat, such bifurcation may result in fresh election. As per the say of the petitioner, initially, the Deputy Secretary, Panchayat, Rural Housing and Rural Development Department, informed the Development Commissioner by his letter dated 4.12.1996 that the proposal of excluding Satadia Falia from main village Kanbhai has been dropped, as, the same is not feasible, and, that even geographically, it was not possible to exclude Satadia Falia from the main village Kanbhai. According to the petitioner, subsequently, on political ground, it was decided to bifurcate the village Kanbhai, and, ultimately, the notification at Annexure-A is issued. The aforesaid bifurcation is challenged by the petitioner on various grounds.

#. It is contended by Mr.Pardiwala that, the decision for bifurcation of village Kanbhai is not bona fide, and that there is no justification for such bifurcation. He submitted that, initially, even though the decision was taken not to bifurcate the village Kanbhai, subsequently, the Government decided to bifurcate the aforesaid village Kanbhai under section 7 of the Gujarat Panchayats Act, 1993. He further submitted that, the reasons given for such bifurcation are not rational and, that by such bifurcation, no purpose will be served. He submitted that, original area of village Kanbhai and the population of the village are such that the village Kanbhai is not required to be bifurcated. Relying upon the judgment of this Court reported in 34 (2) GLR 992, he submitted that, consultation should be effective and meaningful, and since the say of the petitioner has not been objectively considered by the Government, in his submission, the notification is required to be struck down. The

bifurcation is mainly challenged on the ground of irrationality as well as on the ground of absence of proper and effective consultation. He submitted that, bifurcation of village Kanbhai is in violation of Section 7 of the Act, and that the reasons given for bifurcation, i.e. overflowing and water logging in some parts of the area, is not a rational ground, as, according to Mr.Pardiwala, on bifurcation, the problem of water logging between two areas of village is not likely to be solved. In order to substantiate his say, regarding consultation, Mr.Pardiwala has relied upon the various judgments, viz., (1) AIR 1987 SC 1239 para 4, (2) AIR 1988 SC 686 para 16, (3) AIR 1989 SC 568 paras 12 and 13, (4) 1993(2) GLR 992 paras 6, 7 and 8, 1998(1) GLH 932 paras 7 and 8 and the order passed in SCA No.9 of 1998 dated 23.2.2000.

#. The petition is opposed by the State Government as well as by Mr.Japee, learned advocate, who is appearing on behalf of some private parties. So far as the State Government is concerned, affidavit-in-reply has been filed by one N.D.Patel, Under Secretary, Panchayat, Rural Housing and Rural Development Department. The relevant paras of the said affidavit-in-reply read as under.:

"5.1 The Gram Sabha of the Kanbhai village Panchayat, wherein 103 members were present had by a Resolution No.13 dated 25.11.1994, recommended that Satadia Falia be declared a separate village from Kanbhai village as well as a separate village panchayat. The main reason stated for such recommendation was the distance of 2 kms between Satadia Falia and the main gamtal of Kanbhai, as well as the fact that the Kherera river flows between the two parts, as a result of which during monsoon the traffic between both the divisions is suspended. The aforesaid Gram Sabha had been convened under the Chairmanship of the administrator.

5.2 A meeting of the General Body of the Kanbhai Village Panchayat was convened by the Administrator on 25.11.1994 and by a Resolution No.15 the aforesaid request for bifurcation of the village panchayat was made.

5.3 On 9.12.1994, the Assistant Engineer of the Taluka Panchayat had stated that the distance between Kanbhai and Satadia is 2 kms.

5.4 Shri Kanjibhai Patel, M.L.A., Chikhli had

by a letter dated 19.12.1994, supported the aforesaid demand. Ten main leaders of Satadia Falia had also by a letter dated 22.2.1994, made a request in this regard, wherein, Shri Chunilal Nathubhai Patel and others, in all ten persons had put their signatures.

5.5 A meeting of the General Body of Taluka Panchayat Chikhli, was convened by the Administrator thereof, on 31.12.1994, under the Chairmanship of the Taluka Development Officer. It is submitted that by a Resolution No.176, the Taluka Panchayat had supported the proposal made by the Administrator of Kanbhai Village Panchayat and had recommended that Satadia Falia be constituted into a separate revenue village as well as a separate village panchayat.

5.6 In July 1995, elections of the Kanbhai Village Panchayat were held and the following members had been elected:

(1) Mohanbhai Ukabhai Patel - Sarpanch.
(2) Shrimati Jayaben Babubhai Patel - Member.
(3) Amrutbhai Lallubhai Patel - Member.
(4) Dhirubhai Maganbhai Patel
(5) Khalpabhai Koyabhai Patel - Member.
(6) Chhitubhai Nichabhai Patel - Member.
(7) Chimanbhai Merjibhai Patel - Member.
(8) Chanchalben Chunilal Patel - Member.

5.7 The District Development Officer, Valsad by a letter dated 28.8.1995, submitted a proposal for bifurcation of village Kanbhai into village Kanbhai and village Satadia Falia to the Development Commissioner.

5.8 The Development Commissioner, by a letter dated 26.9.1995 sought a clarification from the District Development Officer, as to why a proposal for bifurcation has been submitted on the basis of the proposal made by the administrator without obtaining the opinion of the newly elected body, despite the fact that the newly elected body of the Kanbhai Gram Panchayat has been constituted only two months back i.e. in July 1995.

5.9 The elected body of the Kanbhai Village Panchayat passed a Resolution No.41 dated 16.1.1996, opposing the proposal for bifurcation

of the village panchayat and recommended that the proceedings in this regard be brought to an end. It is submitted that on the basis of the aforesaid resolution of the Kanbhai Village Panchayat, the District Development Officer, Valsad by a letter dated 6.3.1996, opined that the proceedings for bifurcation be discontinued and the entire chapter be filed. The Panchayats, Rural Housing and Rural Development Department by its letter dated 10.12.1996, informed the Development Commissioner and the District Development Officer, Valsad that the proposal for bifurcation has been rejected.

5.10 By a letter dated 6.3.1997, the Panchayats, Rural Housing and Rural Development Department, called for fresh resolutions in respect of bifurcation of the Kanbhai Village Panchayat from the village, taluka and district panchayats. Pursuant to the aforesaid, the District Development Officer, Valsad by a letter dated 17.3.1997, called for fresh resolutions from Kanbhai Village Panchayat, Chikhli Taluka Panchayat and Valsad District Panchayat.

5.11 The Kanbhai Village Panchayat by its general body Resolution No.5 dated 28.4.1997, unanimously resolved to end the issue of bifurcation of village panchayat. The Taluka Panchayat Chikhli, by its Executive Committee Resolution No.37(1) dated 30.6.1997, recommended the bifurcation of the village panchayat. The District Panchayat, Valsad by a Resolution of its Executive Committee No.236 dated 31.7.1997, decided to call for a fresh resolution from the taluka panchayat in this regard. The Taluka Panchayat Chikhli, by its general body Resolution No.38(1) dated 30.6.1997, again recommended the bifurcation of the Kanbhai Village Panchayat. The District Panchayat, Valsad by a Resolution dated 31.7.1997 also recommended the bifurcation. The District Development Officer Valsad, forwarded the aforesaid resolutions passed by the aforesaid three levels of panchayats to the State Government by his letter dated 11.8.1997.

5.12 After fully considering the aforesaid resolutions passed by the village, taluka and district panchayats as well as the norms laid down for bifurcation of villages, and keeping in view the geographical conditions of the village,

the Government of Gujarat, in the exercise of powers under section 7 of the Gujarat Panchayats Act, 1993, by the notification dated 3.9.1997 bifurcated village Kanbhai into village Kanbhai and village Satadia Falia, by excluding from the local area of Kanbhai village the local area of Satadia Falia (Petapara) and specifying the same as village Satadia Falia."

#. As per the aforesaid affidavit-in-reply, it is clear that, initially, in the Gram Sabha of Kanbhai village panchayat, 103 members were present, who had passed a resolution on 25.11.1994, recommending the bifurcation of Kanbhai village panchayat, and, it was resolved to have Satadia Falia to be declared as separate village from Kanbhai village as well as separate village panchayat was also recommended. It was found by certain villagers of the area that, in view of overflowing of Kherera river, which flows between two parts, traffic problem is erected during monsoon, and, in order to solve the aforesaid problem, ultimately, the Government thought it fit to divide the aforesaid two areas. Subsequently, other elected body of the village panchayat, no doubt, passed a resolution opposing such bifurcation. However, in my view, appropriate consultation was already made by the State Government earlier as required by Section 7 of the Act. At the initial stage, the Government took a decision not to bifurcate Kanbhai village, but, subsequently, on the basis of the said material, the decision was taken to bifurcate Kanbhai village.

#. It is submitted by Mr.S.N.Shelat, learned Advocate General, that it cannot be said that, there was no consultation before taking the decision of bifurcation, and, that a rational ground is available of overflowing of water between two parts of the aforesaid two areas, which ultimately prompted the Government to bifurcate Kanbhai village and constitute a new village, namely, Satadia Falia. He submitted that, therefore, the decision taken by the Government, is not required to be interfered with by this Court in exercise of its extraordinary jurisdiction under Article 226 of the Constitution of India, as, it is for the State Government to consider, whether, any particular village is required to be bifurcated or not.

#. Mr.J.V.Japee, learned advocate, filed an application for being joined as parties on behalf of two residents of newly created village Satadia Falia. This Court has permitted them to be joined as parties. It is submitted by Mr.Japee that, from the very beginning there was a

demand to the effect that Satadia Falia may be bifurcated from village Kanbhai and that the said demand was made on the basis of overflowing of water between two areas. He submitted that, even as back as in 1994, a resolution was passed in Gram Sabha for bifurcating the area on the ground that, the intervening river creates difficulties and during the monsoon season, it is not possible to travel from one area to the other, and, in that background, it was resolved to have a separate village. As pointed out earlier, the said resolution is dated 25.11.1994, which is at Annexure-C - page 53.

#. I have heard Mr.Pardiwala, learned advocate, for the petitioner, Mr.S.N.Shelat, learned Advocate General, assisted by Ms.Sonal Vyas, learned Assistant Government Pleader and Mr.J.V.Japee, learned advocate, for the private respondents in great detail.

#. I have gone through the various annexures as well as affidavit-in-reply and rejoinder affidavit. I have also considered the written submissions submitted on behalf of the petitioner. In my view, there is absolutely no substance in this petition and the policy decision taken by the State Government, which is based on rational material on record, cannot be set aside by this Court in a petition filed under Article 226 of the Constitution of India.

#. So far as the first argument of Mr.Pardiwala regarding consultation is concerned, in my view, the village panchayat was asked to give its opinion from time to time. As pointed out earlier, there was already a resolution of the village panchayat for bifurcation, and, subsequently, the elected body had opposed such bifurcation. It seems that, on behalf of residents of village Satadia Falia, there was a demand from the very beginning to have separate village and separate village panchayat in view of the genuine difficulty about crossing the area because of heavy water logging in view of intervening river between two parts of the village. It is, no doubt, true that, initially, the Government had taken the decision not to bifurcate the area, but ultimately a decision is required to be taken for the benefits of the village people. Mr.Pardiwala has also fairly submitted that, at the initial stage, there was consultation, but according to him, subsequently, when the notification was issued, at that stage, there was no fresh consultation, and, therefore, notification is required to be set aside.

##. However, it is required to be noted that, this Court

by its order dated 10.12.1998 (Coram: K.R.Vyas,J) at the time of entertaining this petition, permitted the petitioner to make a representation in connection with the subject matter to the Secretary, Panchayat, Rural Housing and Rural Development Department. In pursuance of the order of this Court, the petitioner made a detailed representation and after hearing the present petitioner and the concerned people, the representation was rejected. Considering the aforesaid aspect of the matter, and when at the initial stage, there was consultation, it cannot be said that the said notification is required to be set aside for want of consultation. Mr.Pardiwala, however, strongly, relied upon the decision of this Court in the case of Nathabhai M.Patel Vs. State of Gujarat and others, reported in 34(2) GLR 992, wherein a Division Bench of this Court has taken the view that, if a fresh decision is taken on the basis of some fresh material, the Government, for making consultation effective and real, is required to ascertain the views of the Panchayat and since no reason was given for not doing so, the Division Bench set aside the said notification. However, so far as the instant case is concerned, as stated earlier, even at the earlier point of time, the Panchayat decided to bifurcate the area, and, subsequently, the elected body opposed the said bifurcation. So, entire material was available with the State Government in order to see, whether Kanbhai village panchayat is required to be bifurcated or not. Ultimately, on the availability of the said material, which is mainly related to water logging problem, the Government decided to bifurcate Kanbhai village panchayat. The main reason for bifurcation is overflowing of the water due to intervening river between two areas, which resulted in causing inconvenience to the village people of Satadia Falia. That fact prompted the State Government to bifurcate the Kanbhai village panchayat. It, therefore, cannot be said that any fresh material was taken into consideration by the State Government for bifurcating the area of Kanbhai village panchayat. Mr.Pardiwala has also fairly stated that, there is nothing in law, which prevents the State Government from reconsidering its earlier decision. Under these circumstances, it cannot be said that there was no effective consultation with the concerned panchayat before bifurcating the area. In the facts and circumstances of the case, therefore, ratio decidendi of the Division Bench decision on which Mr.Pardiwala has relied upon, has no application to the facts of the present case.

##. On behalf of the State Government it is also

submitted that, in view of the various judgments of this Court, consultation part is not mandatory, however, it is not necessary to go into that question, as, in my view, the facts of this case clearly establish that, there is consultation and the say of the panchayat was also taken into consideration and that the ground for bifurcation is overflowing of the water between two areas. Even otherwise, in view of the interim order of this Court, the State Government again gave hearing to the present petitioner and other village people, and, ultimately, after hearing the petitioner, the representation was rejected by the Government. While rejecting the representation, the concerned Secretary of the Government observed that, points raised by the village people of Kanbhai, are not convincing and that the question of bifurcation has created disharmony between the people of two villages and that, if the village people of Satadia Falia want separate village panchayat, the people of Kanbhai village have no right to oppose the same. The Secretary also observed that the Government has bifurcated the village after considering all the pros and cons. On behalf of the State Government, it was pointed out that, at the time of hearing the said representation, Ex-Sarpanch, Ex-Deputy Sarpanch and other social workers of Kanbhai village were present. In that view of the matter, even while affirming the earlier decision, the petitioner was heard.

##. Considering the aforesaid factual aspect of the matter, it cannot be said that, there is no consultation at all, or there is no effective consultation, especially when there is documentary evidence on record, which clearly state that, there is overflowing of water in the area. There are some certificates, which are annexed at pages 69, 70 and 71 of the petition, by which the problem is faced by the village people in view of overflowing of water is pointed out. Considering the aforesaid aspect, in my view, it cannot be said that, there is no consultation/effective consultation, especially when the petitioner was permitted by this Court to approach the Government by way of representation and the same was also taken into consideration, though of course, the same is rejected by the State Government. In view of the same, it is not necessary to examine further the argument of the learned Advocate General, whether consultation should be treated as directory and not mandatory, as has been observed in some of the judgments of this Court, as, ultimately, there is appropriate consultation and reason is given by the Government about overflowing of water and that ground cannot be said to be an irrelevant ground and it cannot be said that there is no effective

consultation.

##. So far as the other contention of Mr.Pardiwala about reason not being genuine or irrationality in bifurcation is concerned, in my view, it is not open for this Court to find out, whether, the reason given by the State Government is rational or not. Even otherwise, considering the facts of this case, the decision arrived at by the State Government is absolutely rational, because, ultimately, the main object is to see that the people of the area may not suffer, and if it is for their convenience, that separate panchayats are required to be established, this Court cannot sit in appeal over the decision taken by the Government which is based on sound material. Once it is established that, because of overflowing of water during monsoon, it is difficult for the residents of Satadia Falia to travel to the other parts of Kanbhai village, and, if ultimately that fact has been taken into consideration by the State Government, in my view, considering the aforesaid aspect, it cannot be said that the decision is irrational in any manner. There is absolutely a rational reason for bifurcating the aforesaid two areas of Kanbhai village. Under these circumstances, in my view, there is no justification in the argument of Mr.Pardiwala to the effect that, there is no "consultation" or "effective consultation" or there is no rational ground available for bifurcating the Kanbhai village. It also cannot be said that the decision is vitiated by any mala fides or by any political ground. Even the panchayat of this very village Kanbhai had already taken the decision to bifurcate the area as back as on 25.11.1994 and cogent grounds are also given by the panchayat in the said resolution, though, of course Mr.Pardiwala submitted that, no such resolution was passed and the same was a concocted document, for which some proceedings are initiated. Mr.Pardiwala also denied the fact about passing of such resolution, as, according to him, there is nothing in the Minutes book of the panchayat, which reflects the factum of passing of such resolution, and that as per the report of the Taluka Development Officer and the Talati, there was no resolution on record. Mr.Japee, learned advocate, however, has pointed out that, a copy of the said resolution was made available to them by the Talati-cum-mantri on 10.9.1999. However, this Court cannot decide such disputed questions of fact, whether such resolution was passed or not. Even otherwise, considering the say of the village people of Satadia Falia and considering the difficulty, which is being faced by the village people, if the Government has taken a decision to bifurcate the area, in my view, such

decision is not required to be interfered with by this Court, as, in my view, there is no error of any procedure, which can be said to have been committed by the State. Suffice it to say that, on relevant and rational material available, ultimately, a decision is taken by the State Government to bifurcate Kanbhai village.

##. In view of what is stated above, in my view, the decision of the State Government and the notification are not required to be interfered with by this Court in a petition filed under Article 226 of the Constitution of India. Considering the affidavit-in-reply and the material on record, I do not find any substance in this petition. The petition is, therefore, dismissed. Rule is discharged with no order as to costs. Interim relief granted earlier stands vacated.

##. In view of the order in the main petition, i.e. Special Civil Application No.7277 of 1997, no order on Civil Application No.14814 of 1999. Civil Application stands disposed of accordingly.

(P.B.Majmudar,J)
(pathan)